

REMARKS

Claims 1-7, 9, 10, 14, and 15 are all the claims pending in the present application. In summary, the Examiner maintains the previous rejections of the pending claims, and adds new arguments in the *Response to Arguments* section of the present Office Action on pages 11-14. Specifically, claims 1-3, 5-7, 9, 10, 14 and 15 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Nelson et al. (US Patent No. 5,568,641). Claims 1 and 4-6 remain rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Mitsui, Hitoshi (JP 2001117780 A), hereinafter referred to as Mitsui. Claims 1 and 4-6 remain rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Matsui et al. (JP 09138769 A). Claims 1-3, 5-7, 9 and 10 remain rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Takeo, Kazunori (JP 10105407 A), hereinafter referred to as Takeo. Finally, claim 4 remains rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nelson and further in view of Kurihara, Nobumasa (JP 411328040 A), hereinafter referred to as Kurihara.

§ 102(b) Rejections (Nelson) - Claims 1-3, 5-7, 9, 10, 14, and 15

In the *Response to Arguments* section of the Office Action dated October 4, 2006, the Examiner alleges:

Regarding claim 1, Applicant has argued (second paragraph on page 3) that the use of two memories is not simply a matter of a designer's decision, as using two memories can be advantageous and should be given a patentable weight. The Examiner would agree if there is particular way of using two memories that is different from well known to one skilled in the art. As Applicant admits, that is not only designer's decision ... Thus it seems that Applicant admits that using two memories is common. As disclosed in Applicant's original specification at lines 8-13 on page 4, "Preferably, the upgrading of software includes the steps of downloading the new version of the software through the network,

copying the old version of the software stored in a first area of the network device to a second area of the network device, erasing the old version of the software from the first area of the network device, and storing the new version of the software in the first area.” It does suggest either separate memory areas or some kind of memory division could be used to achieve the claimed invention. Applicant does continue to describe, as in the claim language, using 1st and 2nd memories, however it is the Examiner’s reading that using 1st and 2nd memories is for describing the invention. As long as the function intended is described as is also covered by the cited art, i.e., Nelson, then the fact is if using two memories or one memory will make difference that does not seems to be the intended invention. As for the benefit of using two instead of one per Applicant’s statement is not conclusive, thus there is no evidence showing that using two memories is patentable in current application.

In response, Applicant submits that there was no such admission that two memories is common. The specification simply mentions that, in an exemplary embodiment of the present invention, the upgrading of software includes the steps of downloading the new version of the software through the network, copying the old version of the software stored in a first area of the network device to a second area of the network device, erasing the old version of the software from the first area of the network device, and storing the new version of the software in the first area. Discussing what is being disclosed in an exemplary embodiment of the present invention does not imply that such features are common in the art.

Further, Applicant traverses the Examiner’s assertion that the cited art only needs to cover the function intended by the two memories. That is, Applicant submits that the applied art must satisfy each and every limitation of the claimed invention. Here, for example, the prior art does not disclose or suggest, “a first memory for storing data necessary for operating the network

device,” and a separate “second memory for storing information transferred through the network,” and therefore Nelson does not satisfy the claimed invention.

At least based on the foregoing, Applicant maintains that independent claim 1 is patentably distinguishable over Nelson.

With respect to dependent claims 2, 3, 5, 6, 14, and 15, Applicant submits that these claims are patentable by virtue of their dependencies from independent claim 1. Further, with respect to claim 2, Applicant maintains the previously submitted arguments.

The Examiner’s brief statement regarding claim 2 in paragraph “d” on page 12 is confusing, as the portions of the Office Action that correspond to “item d in section 9” and “item a in section 10,” according to Applicant’s understanding, do not relate to claim 2.

Applicant submits that independent claims 7 and 9 are patentable at least based on reasons similar to those set forth above with respect to claim 1.

With respect to claim 10, Applicant previously argued that Nelson does not disclose or suggest at least, “wherein the at least one failure is a failure in the network device which is checked during the erasing and storing steps,” as recited in claim 10. The Examiner alleges that the features of claim 10 are well known in the art, and cites Nelson to support the well known argument. However, nowhere does Nelson disclose or suggest the specific feature of the failure being one which is checked during the erasing and storing steps. There is no mention in Nelson of a failure that is checked during the erasing and storing step. Therefore, at least based on the foregoing, Applicant maintains that claim 10 is patentably distinguishable over Nelson.

Yet further, with respect to claim 1, Applicant submits that Nelson does not disclose or suggest at least, “a conditional access system (CAS) for verifying whether the network device has the authority to upgrade the software,” as recited in amended claim 1. Applicant submits that amended independent claims 7 and 9 are patentable at least because these claims recite features similar above-quoted feature of claim 1.

§ 102(a) Rejections (Mitsui) - Claims 1 and 4-6

Applicant submits that Mitsui does not disclose or suggest at least, “a conditional access system (CAS) for verifying whether the network device has the authority to upgrade the software,” as recited in amended claim 1.

Applicant submits that dependent claims 4-6 are patentable at least by virtue of their dependency from independent claim 1.

§ 102(b) Rejections (Matsui) - Claims 1 and 4-6

Applicant submits that claims 1 and 4-6 are patentable over Matsui at least based on reasons similar to those set forth above with respect to the Mitsui reference.

§ 102(b) Rejections (Takeo) - Claims 1-3, 5-7, 9, and 10

Applicant submits that Takeo does not disclose or suggest at least, “a conditional access system (CAS) for verifying whether the network device has the authority to upgrade the software,” as recited in amended claim 1. Applicant submits that independent claims 7 and 9 are patentable at least based on features similar to those set forth above with respect to claim 1.

Applicant submits that dependent claims 2, 3, 5, 6, and 10 are patentable at least by virtue of their dependency from independent claims 1 and 9.

§ 102(b) Rejections (Nelson / Kurihara) - Claim 4

Amendment Under 37 C. F. R. § 1.114 (c)
U.S. Application No.: 10/046,912

Attorney Docket No.: Q67327

Applicant submits that claim 4 is patentable at least by virtue of its dependency from independent claim 1. Kurihara does not make up for the deficiencies of Nelson.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

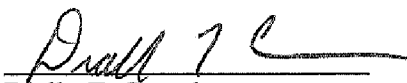
SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: January 4, 2007


Diallo T. Crenshaw
Registration No. 52,778